Supreme Court of the United States

OCTOBER TERM, 1963

No. 88

NATIONAL LABOR RELATIONS BOARD,
PETITIONER

vs.

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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[fol. A] * * *

[fol. B]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,588

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, AND JOINT COUNCIL NO. 28 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
PETITIONERS

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition for Review of and Cross Petition for Enforcement of an Order of the National Labor Relations Board.

JOINT APPENDIX—filed November 17, 1961

* * * *

[fol. 1]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHARGE—filed January 9, 1961

FORM NLRB-508 (7-52)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved Budget Bureau No. 64-R003.1

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with the provisions of Sections 9 (f), (g), and (h) of the National Labor Relations Act.

DO NOT WRITE IN THIS SPACE

CASE NO. 19-00-155

DATE FILED 1-9-61

COMPLIANCE STATUS CHECKED BY:

INSTRUCTIONS: File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME Fruit & Vegetable Packers & Warehousemen, Local 760

ADDRESS 16 North 3rd Ave., Yakima, Washington

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS(HAVE) ENGAGED AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(b) SUBSECTION(S) (4)(i) and (ii)(B) OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about December 27, 1960, and thereafter, the said union induced and encouraged the employees of certain retail grocery stores in Seattle, Washington, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, and has threatened, coerced, and restrained Safeway Stores and other retail employers, with an object of forcing or requiring said employers and other employers and persons to cease doing business with members of Tree Fruits Labor Relations Committee, Inc. and all other packers of Washington apples except Pacific Fruit and Produce Company.

3. NAME OF EMPLOYER Tree Fruits Labor Relations Committee, Inc.

4. LOCATION OF PLANT INVOLVED (Street, City, and State) Yakima, Washington

5. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.) fruit packers

6. IDENTITY PRINCIPAL PRODUCT OR SERVICE packing and storing apples

7. NO. OF WORKERS EMPLOYED about 700

8. FULL NAME OF PARTY FILING CHARGE Tree Fruits Labor Relations Committee, Inc.

9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State) Holtzinger Building, Yakima, Washington

10. TEL. NO. GL 2-8555

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BY MARY ELLEN KRUG
(Signature of representative or person making charge)

January 6, 1961
(Date)

Attorney
(Title or office, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

GPO 919364

[fol. 2] Ext. 561

January 9, 1961

Fruit & Vegetable Packers &
Warehousemen, Local 760
16 North 3rd Avenue
Yakima, Washington

Re: Fruit & Vegetable Packers &
Warehousemen, Local 760
Case No. 19-CC-155
(Tree Fruits Labor Relations
Committee, Inc.)

Gentlemen:

We hereby serve upon you a copy of charge filed with this office by Tree Fruits Labor Relations Committee, Inc. I would appreciate receiving from you promptly a full and complete written account of the facts and statement of your position in respect to the allegations set forth in the charge.

This case has been assigned to Attorney Gordon M. Byrholdt who will contact you at some time during the investigation of this matter, and any communications relative to the case should be directed to this Board agent.

Very truly yours,

THOMAS P. GRAHAM, JR.,
Regional Director

Enclosure

Registered No. 243809
Return receipt requested

Certificate of service (omitted in printing)

[fol. 3]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE—filed February 6, 1961

FORM NLRB-508 (7-61)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved Budget Bureau No. 64-R003.9

AMENDED CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Where a charge is filed by a labor organization, or an individual or group on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with the provisions of Section 9 (f), (g), and (h) of the National Labor Relations Act.

DO NOT WRITE IN THIS SPACE

Case No. 19-00-155

Date Filed 1-9-61

Amended 2-6-61

INSTRUCTIONS: File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Compliance Status Checked By:

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

Name: Fruit & Vegetable Packers & Warehousemen, Local 760 and Joint Council No. 28 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Address: 16 North Third Ave., Yakima, Washington,
552 Denny Way, Seattle 9, Washington

The above-named organization(s) or its agents has engaged in and is/are engaging in unfair labor practices within the meaning of section 8(b) subsection(s) (4)(i)(ii)(B) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about December 27, 1960, and thereafter, the said unions induced and encouraged the employees of certain retail grocery stores in Seattle, Washington, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, and have threatened, coerced, and restrained Safeway Stores and other retail employers, with an object of forcing or requiring said employers and other employers and persons to cease doing business with members of Tree Fruits Labor Relations Committee, Inc, and all other packers of Washington apples except Pacific Fruit and Produce Company.

3. NAME OF EMPLOYER: Tree Fruits Labor Relations Committee, Inc.

4. LOCATION OF PLANT INVOLVED (Street, City, and State): Yakima, Washington.

5. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.): fruit packers

6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: packing and storing apples

7. NO. OF WORKERS EMPLOYED: About 700

8. FULL NAME OF PARTY FILING CHARGE: Tree Fruits Labor Relations Committee, Inc.

9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State): Holtzinger Building, Yakima, Washington

10. TEL. NO.: GL 2-8555

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

By MARY ELLEN KRUG
(Signature of representative or person making charge)

Feb. 3, 1961 (Date)

Attorney (Title or office, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

GPO 918364

[fol. 4] Ext. 561

February 6, 1961

Fruit & Vegetable Packers &
Warehousemen, Local 760
16 North Third Avenue
Yakima, Washington

Joint Council No. 28 of the Int'l Bro.
of Teamsters, Chauffeurs, Warehousemen
and Helpers of America
552 Denny Way
Seattle 9, Washington

Re: Fruit & Vegetable Packers & Warehousemen, Local 760 and Joint Council No. 28 of the International Bro. of Teamsters, Chauffeurs, Warehousemen and Helpers of America
Case No. 19-CC-155
(Tree Fruits Labor Relations Committee, Inc.)

Gentlemen:

We hereby serve upon you a copy of an amended charge filed with this office by Tree Fruits Labor Relations Committee, Inc., which is largely self-explanatory.

I would appreciate receiving from you promptly a full and complete written account of the facts and a statement of your position in respect to the allegations set forth in this amended charge.

Very truly yours,

THOMAS P. GRAHAM, JR.,
Regional Director

[fol. 5] Enclosure

Registered No. 243879 and 243880
Return Receipt requested

Certificate of service (omitted in printing)

[fol. 6] * * * *

Before the

NATIONAL LABOR RELATIONS BOARD,

Nineteenth Region

Case No. 19-CC-155

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760

and

TREE FRUITS LABOR RELATIONS COMMITTEE, INC.

COMPLAINT AND NOTICE OF HEARING.—January 23, 1961

It having been charged by Tree Fruits Labor Relations Committee, Inc. (herein called Tree Fruits), that Fruit & Vegetable Packers & Warehousemen, Local 760 (herein called the Respondent) has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, as amended, 29 U. S. C. 151 *et seq.*, herein called the Act, the General counsel of the National Labor Relations Board, on behalf of said Board, by the undersigned Regional Director for the Nineteenth Region, acting pursuant to Section 10 (b) of the Act and the Board's Rules and Regulations, Series 8, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

I.

The charge herein was filed on January 9, 1961, and a copy thereof was served on the Respondent by registered mail on January 9, 1961.

II.

The Respondent maintains its principal office at Yakima, Washington, and is a labor organization within the meaning of Section 2 (5) of the Act.

[fol. 7] III.

Tree Fruits is a Washington corporation with its principal office in Yakima, Washington. It is organized to advise with and act in behalf of its employer-members, which are business firms in the fruit packing industry in the vicinity of Yakima. Tree Fruits acts as the agent of its employer-members in labor disputes and in bargaining collectively with labor organizations that represent employees of its employer-members.

During the last fiscal year, the employer-members of Tree Fruits packed and sold and shipped to purchasers located outside the State of Washington apples and soft fruits valued in excess of $10,000,000.00.

IV.

Safeway Stores, Inc. (herein called Safeway), is a Maryland corporation with its principal office in Baltimore, Maryland, and is engaged in the retail sale of food in several states, including the State of Washington. During 1960, Safeway stores in the State of Washington received goods and merchandise shipped directly from outside the State of Washington valued in excess of $1,000,000.00.

V.

Tree Fruits and its employer-members are employers within the meaning of Section 2 (2) of the Act and are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

VI.

Commencing on or about August 29, 1960, the Respondent engaged in picketing at the warehouses of the employer-members of Tree Fruits in an effort to obtain certain contractual agreements on behalf of the employees of the employer-members of Tree Fruits.

[fol. 8] VII.

Commencing on or about December 27, 1960, the Respondent, in furtherance of the objects referred to in

paragraph VI hereof, engaged in picketing at the premises of retail stores of Safeway, located in and about Seattle, Washington, which were engaged in the retail sale of apples grown in the State of Washington and packed or produced by the employer-members of Tree Fruits, or others.

VIII.

By its acts and conduct set forth in paragraph VII hereof and by other means, the Respondent has engaged in and has induced and encouraged individual employees of Safeway and other employers engaged in commerce or in an industry affecting commerce to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle, or work on goods or commodities or to perform services, and have threatened, coerced and restrained Safeway and other persons engaged in commerce or in an industry affecting commerce, with an object of forcing or requiring Safeway or other persons to cease using, selling handling, transporting, or otherwise dealing in the goods or commodities of, and to cease doing business with, the members of Tree Fruits, and thereby has engaged in, and is now engaging in, unfair labor practices within the meaning of Section 8 (b) (4) (i) (ii) (B) of the Act.

IX.

The activities of the Respondent, as described in paragraph VII hereof, occurring in connection with the operation of Safeway, Tree Fruits and its employer-members, and other employers, as described in paragraphs III and IV herein, have a close, intimate, and substantial rela- [fol. 9] tion to trade, traffic and commerce among the several states of the United States and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce and constitute unfair labor practices affecting commerce within the meaning of Section 8 (b) (4) (i) (ii) (B) and Sections 2 (6) and (7) of the Act.

Please Take Notice that on the 14th day of February, 1961, at 10:00 A. M. (PST), in the Hearing Room of the

National Labor Relations Board, 327 Logan Building, Seattle, Washington, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You Are Further Notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Seattle, Washington, this 23rd day of January, 1961.

THOMAS P. GRAHAM, JR.,
Regional Director,
National Labor Relations Board,
Region 19,
327 Logan Building,
Seattle, Washington

[fol. 10] * * * *

Before the

NATIONAL LABOR RELATIONS BOARD,

Nineteenth Region

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, AND JOINT COUNCIL NO. 28 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA

and

TREE FRUITS LABOR RELATIONS COMMITTEE, INC.

AMENDED COMPLAINT AND NOTICE OF HEARING—
February 14, 1961

It having been charged by Tree Fruits Labor Relations Committee, Inc. (herein called Tree Fruits), that Fruit & Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (herein respectively called Respondent Local and Respondent Council) have engaged in and are engaging in certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, as amended, 29 U. S. C. 151 et seq., herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the undersigned Regional Director for the Nineteenth Region, acting pursuant to Section 10 (b) of the Act and the Board's Rules and Regulations, Series 8, Sections 102.15 and 102.17, hereby issues this Amended Complaint and Notice of Hearing and alleges as follows:

[fol. 11] I.

The original charge herein was filed on January 9, 1961, and a copy thereof was served on Respondent Local by registered mail on January 9, 1961.

The amended charge herein was filed on February 6, 1961, and copies thereof were served on the Respondents.

II.

Respondent Local maintains its principal office at Yakima, Washington, and Respondent Council maintains its principal office at Seattle, Washington. Each Respondent is a labor organization within the meaning of Section 2 (5) of the Act.

III.

Tree Fruits is a Washington corporation with its principal office in Yakima, Washington. It is organized to advise with and act in behalf of its employer-members, which are business firms in the fruit packing industry in the vicinity of Yakima. Tree Fruits acts as the agent of its employer-members in labor disputes and in bargaining collectively with labor organizations that represent employees of its employer-members.

During the last fiscal year, the employer-members of Tree Fruits packed and sold and shipped to purchasers located outside the State of Washington apples and soft fruits valued in excess of $10,000,000.00.

IV.

Safeway Stores, Inc (herein called Safeway), is a Maryland corporation with its principal office in Baltimore, Maryland, and is engaged in the retail sale of food [fol. 12] in several states, including the State of Washington. During 1960, Safeway Stores in the State of Washington received goods and merchandise shipped directly from outside the State of Washington valued in excess of $1,000,000.00.

V.

Tree Fruits and its employer-members are employers within the meaning of Section 2 (2) of the Act and are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

VI.

Commencing on or about August 29, 1960, Respondent Local engaged in picketing at the warehouses of the em-

ployer-members of Tree Fruits in an effort to obtain certain contractual agreements on behalf of the employees of the employer-members of Tree Fruits.

VII.

Commencing on or about December 27, 1960, Respondent Local, assisted by Respondent Council, in furtherance of the objects referred to in paragraph VI hereof, engaged in picketing at the premises of retail stores of Safeway, located in and about Seattle, Washington, which were engaged in the retail sale of apples grown in the State of Washington and packed or produced by the employer-members of Tree Fruits, or others.

VIII.

By its acts and conduct set forth in paragraph VII hereof and by other means, Respondent Local and Respondent Council have engaged in and have induced and encouraged individual employees of Safeway and other [fol. 13] employers engaged in commerce or in an industry affecting commerce to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods or commodities or to perform services, and have threatened, coerced and restrained Safeway and other persons engaged in commerce or in an industry affecting commerce, with an object of forcing or requiring Safeway or other persons to cease using, selling, handling, transporting, or otherwise dealing in the goods or commodities of, and to cease doing business with, the members of Tree Fruits, and thereby have engaged in, and are now engaging in, unfair labor practices within the meaning of Section 8 (b) (4) (i) (ii) (B) of the Act.

IX.

The activities of Respondent Local and Respondent Council, as described in paragraph VII hereof, occurring in connection with the operation of Safeway, Tree Fruits and its employer-members, and other employers, as described in paragraphs III and IV herein, have a close, in-

timate, and substantial relation to trade, traffic and commerce among the several states of the United States and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce and constitute unfair labor practices affecting commerce within the meaning of Section 8 (b) (4) (i) (ii) (B) and Sections 2 (6) and (7) of the Act.

Please Take Notice that on the 28th day of February, 1961, at 10:00 A. M. (PST), in the Hearing Room of the National Labor Relations Board, 327 Logan Building, Seattle, Washington, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Amended Complaint, at which time and place you will [fol. 14] have the right to appear in person, or otherwise, and give testimony.

You Are Further Notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondents shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Amended Complaint within ten (10) days from the service thereof, and that unless they do so, all of the allegations in the Amended Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Seattle, Washington, this 14th day of February, 1961.

THOMAS P. GRAHAM, JR.,
THOMAS P. GRAHAM, JR.,
Regional Director,
National Labor Relations
Board,
Region 19,
327 Logan Building,
500 Union Street,
Seattle 1, Washington

[fol. 15] * * * *

Before the

NATIONAL LABOR RELATIONS BOARD,

Nineteenth Region

Case No. 19-CC-155

[Title Omitted]

ANSWER OF RESPONDENT FRUIT AND VEGETABLE PACKERS & WAREHOUSEMEN'S LOCAL 760, TO AMENDED COMPLAINT—filed February 23, 1961

Answering the Amended Complaint herein, respondent Fruit and Vegetable Packers & Warehousemen's Local Union 760, admits, denies and alleges as follows:

I.

Admits the allegations of Paragraphs I, II, III, IV, V and VI.

II.

Answering Paragraph VII, this respondent admits the allegations contained therein, but states that the assistance rendered by respondent Council, in connection with the activities described in said paragraph, consisted solely of the Council's loaning of an organizer to work for this respondent.

[fol. 16] III.

Denies the allegations of Paragraphs VIII and IX.

Wherefore, having fully answered the amended complaint herein, this respondent prays that same be dismissed.

RICHARD P. DONALDSON and
BASSETT, DAVIES & ROBERTS,
Attorneys for Respondent,
Fruit & Vegetable Packers & Warehousemen's Local 760,
811 Alaska Building,
Seattle 4, Washington

* * * *

Before the

NATIONAL LABOR RELATIONS BOARD,

Nineteenth Region

Case No. 19-CC-155

[Title Omitted]

ANSWER OF JOINT COUNCIL NO. 28 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, TO AMENDED COMPLAINT.—filed February 23, 1961

Answering the Amended Complaint herein, respondent Joint Council No. 28 of the International Brotherhood of [fol. 17] Teamsters, Chauffeurs, Warehousemen, and Helpers of America, admits, denies and alleges as follows:

I.

Admits the allegations of Paragraphs I, II, III, IV, V and VI.

II.

Answering Paragraph VII, this respondent admits the allegations contained therein but states that the assistance which it rendered to respondent Local, in connection with the activities described in said paragraph, consisted solely of this respondent loaning a council organizer to work for respondent Local.

III.

Denies the allegations of Paragraphs VII and IX.

Wherefore, having fully answered the amended complaint herein, this respondent prays that the same be dismissed.

RICHARD P. DONALDSON and
BASSETT, DAVIES & ROBERTS,
Attorneys for Respondent,
Joint Council No. 28 of the
International Brotherhood
of Teamsters, Chauffeurs,
Warehousemen, and Helpers
of America,
811 Alaska Building,
Seattle 4, Washington

[fol. 18] • • • • •

Before the

NATIONAL LABOR RELATIONS BOARD,

Nineteenth Region

Case No. 19-CC-155

[Title Omitted]

STIPULATION OF FACTS.—February 23, 1961

It Is Stipulated and Agreed by and between Fruit & Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28, each affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein respectively called Local 760 and Joint Council No. 28), by their attorneys Bassett, Davies and Roberts, Tree Fruits Labor Relations Committee, Inc. (herein called Tree Fruits), by their attorneys McMicken, Rupp and Schweppe, and Gordon M. Byrholdt, Counsel for the General Counsel for the National Labor Relations Board, in order to effectuate the purposes of the National Labor Relations Act, as amend-

ed, 61 Stat. 136, 73 Stat. 519, and to avoid unnecessary cost and delay:

1. The Charge, Amended Charge, Complaint, Amended Complaint, Affidavit of Service of the charge and the [fol. 19] amended charge, Answer and this Stipulation of Facts and the exhibits attached hereto constitute the entire record of the case and that no oral testimony is necessary or desired by any of the parties. The parties further stipulate that they waive a hearing and the taking of testimony or the submission of evidence before a Trial Examiner, the making of findings of fact and conclusions of law by the Trial Examiner, and the issuance of an Intermediate Report and recommended Order; and that they desire to submit this case for findings of fact and conclusions of law and issuance of order directly by the Board.

2. Upon a charge and amendment thereto filed by Tree Fruits, General Counsel for the National Labor Relations Board, on behalf of said Board by the Regional Director of the Nineteenth Region, issued a Complaint and Notice of Hearing herein on the 23rd day of January, 1961, and an Amended Complaint and Notice of Hearing on February 14, 1961.

3. The Answers of the Respondents to the Amended Complaint was duly filed with the Regional Director on February 23, 1961.

4. Local 760 and Joint Council No. 28 are labor organizations within the meaning of Section 2 (5) of the Act.

5. Tree Fruits is a Washington corporation with its principal office in Yakima, Washington. It is organized to advise with and act on behalf of its employer-members which are business firms in the fruit packing and warehousing industry in the vicinity of Yakima. Tree Fruits acts as the agent of its employer-members in labor disputes and in the bargaining collectively with labor organizations that represent employees of its employer-members.

During the last fiscal year, the employer-members of Tree Fruits packed, sold and shipped to purchasers lo- [fol. 20] cated outside the State of Washington apples and soft fruits valued in excess of $10,000,000.00.

6. Safeway Stores, Inc. is a Maryland corporation with its principal office at Baltimore, Maryland, engaged in retail sale of food in several states, including the State of Washington. During 1960, Safeway Stores in the State of Washington received goods and merchandise shipped directly from outside the State of Washington valued in excess of $1,000,000.00 and made sales at retail in excess of $1,000,000.00.

7. Tree Fruits and its employer-members and Safeway Stores, Inc. are each employers within the meaning of Section 2 (2) of the Act and are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

8. Washington State has a large fresh fruit packing and warehousing industry. There are numerous firms engaged in this industry. Generally speaking, these firms obtain fresh fruit on consignment from the growers, store it at their warehouses, and sell, pack and ship it to various markets, as the demand dictates. Upon selling the fruit, these firms will deduct from the proceeds of the sale a charge for their services in storing, packing and selling the fruit and other charges, and remit the balance to the growers.

The employees who work for these firms, except those who work for certain firms in the area of Yakima, Washington, are not members of organized labor, and there are no collective bargaining agreements existing between these firms and any labor organization.

In the area of Yakima, Washington, there are twenty-four (24) fresh fruit packing and warehousing firms, the majority of whose employees were members of Respondent [fol. 21] Local 760 on August 29, 1960. Local 760 has acted as collective bargaining representative for these employees for a number of years. Twenty-one (21) of these firms are members of Tree Fruits, and have bargained with Local 760 through Tree Fruits. Exhibit No. 1 is a list of these firms. The other three (3) firms (Pacific Fruit and Produce Co., Yakima, Fruit Growers Association, and Forney Fruit and Produce Co.) have bargained with Local 760 separately. There are more than 1,500 employees working for these firms during the main packing season, which is the apple packing season.

In 1960, the collective bargaining agreements between Local 760 and the aforesaid firms were terminated and the parties attempted to negotiate new agreements. The main negotiations were those involving Local 760 and Tree Fruits. During these particular negotiations, Tree Fruits asked for several modifications in the agreement concerning union security, seniority, overtime, etc., asserting that it had to have such modifications in order to meet the competition of the non-union firms in the industry. Following several negotiating meetings, Local 760 called a strike against the Tree Fruit employers, starting on August 29, 1960. Strikes were also called against the Yakima Fruit Growers Association and against Forney Fruit and Produce Company. An agreement was reached with Pacific Fruit and Produce Company, and no strike was called against that company.

At all times relevant hereto, Local 760 and its members were actively continuing in strikes against the aforesaid employers.

9. In December, 1960, Local 760 decided, in furtherance of its disputes with the aforesaid employers, to engage in a consumer boycott program, asking the public not to buy Washington State apples. Local 760 then re- [fol. 22] quested of Joint Council No. 28, with which it is affiliated, that Joint Council organizers be loaned to Local 760 for the purpose of assisting with this program. Thereafter, the Joint Council Executive Board assigned Mr. Fred Bowen, a Joint Council organizer, to work with Local 760 until further notice. (See Exhibits Nos. 2 and 3, which are from the December 23, 1960 and the January 21, 1961 issues, respectively, of the Washington Teamsters, the official publication of Joint Council No. 28.) While so engaged on behalf of Local 760, and at all times relevant hereto, Fred Bowen acted under the direction and control of Mr. James Farrington, Secretary-Treasurer of Local 760. During this time he was paid his usual organizer's salary and expense allowance, by the Joint Council.

In late December, 1960, Mr. Farrington instructed Mr. Bowen to carry out a program of picketing and handbilling at the premises of certain Safeway stores in Seattle, Washington. Said stores were then engaged in the

sale of apples which they had obtained from employers belonging to the Tree Fruits group.

On December 27 and 29, 1960, and on January 5, 6, 7, 12, 13, 14 and 19, 20, 21, 1961, pickets who carried placards and distributed handbills, appeared at the premises of several Safeway stores located in and near Seattle, Washington. Exhibit No. 4 is a list of the stores. In most cases, two (2) pickets appeared at each store, but at one store there were (3) pickets. These pickets consisted of: (1) union representatives in the Seattle area who volunteered their services; (2) striking members of Local 760 who traveled from Yakima to Seattle for this purpose; and (3) hired pickets, who were obtained locally, and paid by Local 760 for their services.

Mr. Farrington instructed Mr. Bowen as to how the program of picketing and handbilling should be carried on [fol. 23] and Bowen, in turn, instructed the pickets. Before any person was permitted to picket or distribute handbills, he was furnished with a copy of a document entitled, "Instructions to Pickets", signed by Bowen, as a representative of Local 760. Exhibit No. 5 is a copy of said "Instructions to Pickets." The picketing was at all times conducted in conformity with these instructions.

Before the picketing began and before any handbills were distributed, either Mr. Bowen or one of the pickets approached each store manager and gave him a document entitled, "Notice to Store Manager and Store Employees", signed by Bowen, as a representative of Local 760, together with a copy of the document entitled, "Instructions to Pickets". Exhibit No. 6 is a copy of the "Notice to Store Manager and Store Employees."

The pickets patrolled in front of the store premises, wearing cardboard placards stating as follows:

> "TO THE CONSUMER: NON-UNION WASHINGTON STATE APPLES ARE BEING SOLD AT THIS STORE. PLEASE DO NOT PURCHASE SUCH APPLES. THANK YOU. TEAMSTERS LOCAL 760, YAKIMA, WASHINGTON."

They also distributed handbills. Exhibits No. 7 and No. 8 are copies of the two types of handbills which were

distributed. Exhibit No. 9 is a photograph of two pickets in front of one of the stores.

The pickets appeared at the store premises after the stores opened for business and left before the stores closed. They walked back and forth on the sidewalks in front of the main customer entrances to the stores, handing handbills to any persons passing by who were willing to accept them. At no time did they walk in front of the store [fol. 24] entrances which were used solely by the employees of the stores, or used solely for the delivery of merchandise.

At several locations the Safeway stores were situated to the rear of a parking lot and the pickets, wearing placards bearing the legend herein referred to, confined their picketing to the public sidewalk near the entrance to the parking lot in conformity with the "Instructions to Pickets", Exhibit No. 5, subparagraph 2. At these locations the pickets were unable to distribute handbills in any large numbers to the store patrons, as such patrons usually drove through the entrances of the parking lot without stopping and went directly into the store from their parked automobile.

The pickets were visible, through the windows of the stores, to some of the employees working in the stores. Some of the employees of the stores used the main customer entrances to the stores for ingress and egress and, in so doing, passed by the pickets.

At all times, while the picketing and handbilling was being conducted, the employees of the stores continued to work in the normal way. Likewise, the stores continued to receive deliveries of merchandise in the normal way. No deliveries or pickups were stopped or interfered with and no employee of Safeway or of any other employer quit work or refused to handle fruit packed by the employer-members of Tree Fruits.

At all times, the picketing and handbilling was peacefully conducted. The entrances to the stores were not blocked and ingress and egress was not interfered with.

10. That this Stipulation of Facts is made without prejudice to any of the objections that any party may have as to the materiality or relevancy of any facts stated herein.

[fol. 25] 11. That the parties to this stipulation shall have thirty (30) days from the date of execution of the stipulation to file briefs to the Board and to request oral argument before the Board, and the failure of any party to file briefs or to make request for oral argument within this time shall be deemed a waiver of the right to file such briefs or request.

Executed this 23rd day of February, 1961.

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760,

By RICHARD P. DONALDSON
For BASSETT, DAVIES & ROBERTS,

JOINT COUNCIL NO. 28, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

By RICHARD P. DONALDSON,
For BASSETT, DAVIES & ROBERTS,

TREE FRUITS LABOR RELATIONS COMMITTEE, INC.,

By MARY ELLEN KRUG,

COUNSEL FOR THE GENERAL COUNSEL,

By GORDON M. BYRHOLDT,
GORDON M. BYRHOLDT

[fol. 26]

EXHIBIT NO. 1 TO STIPULATION OF FACTS

ACKLEY FRUIT COMPANY
CUBBERLY FRUIT CO.
HANSEN FRUIT AND COLD STORAGE CO.
HIGHLAND FRUIT GROWERS, INC.
C. M. HOLTZINGER FRUIT CO.
W. W. JUDY FRUIT CO.
LARSON FRUIT CO.
MATSON FRUIT CO.
NORDBERG SELAH FRUIT, INC.
NORDBERG-WESTBROOK FRUIT, INC.
J. N. PERRY ICE & COLD STORAGE CO.
PERHAM FRUIT CORPORATION
PRENTICE PACKING AND COLD STORAGE CO.
RICHEY & GILBERT CO.
W. F. ROCHE FRUIT CO.
STADELMAN FRUIT CO.
SUNDQUIST FRUIT AND STORAGE CO.
WARREN & COMPANY
WASHINGTON FRUIT & PRODUCE CO.
WILLIAMS FRUIT CO.
YAKIMA FRUIT & COLD STORAGE CO.[1]

[1] Local 780 contends that there were 24 Tree Fruits employers involved in the strike. Tree Fruits position, however, is that 3 of the employers had gone out of business.

DON'T BUY UNFAIR WASHINGTON APPLES

552 Denny Way, Seattle 9, Wn.
Return Postage Guaranteed

WASHINGTON TEAMSTER

OFFICIAL PUBLICATION JOINT COUNCIL OF TEAMSTERS NO. 28

Labor's greatest voice in the Pacific Northwest

Vol. XXIII, No. 43 — SEATTLE, WASHINGTON December 23, 1960

Joint Council to push Seattle apple boycott

A wire to Joint Council of Teamsters No. 42, Los Angeles, re-affirming the Washington Joint Council's wholehearted support of the Yakima Apple Boycott was read at the Tuesday meeting of statewide Teamster secretaries and business agents.

Plans for similar boycott action in the Los Angeles area prompted the wire from the executive board of Joint Council No. 28.

Meanwhile, machinery was set in motion to start picketing stores in the greater Seattle area that are handling and selling non-union Yakima apples late this week.

Fred J. Bowen, an organizer for the Joint Council, was appointed by Chairman Frank W. Brewster to head up the picketing detail.

Labels of the four brands of apples that are "fair" were displayed at the Tuesday meeting to acquaint the local Teamster leaders with brand names. All apples excepting those from Pacific Fruit are on the boycott list of Cannery Warehousemen Local 760, Yakima.

The union is striking 33 warehouses in the Yakima valley area for a new contract and retention of unionism conditions achieved over a long period of time. The employers are out to bust the union and turn back the clock a quarter of a century to open shop, phoney "right to work" conditions.

Each union in the Seattle Joint Council area was requested to supply volunteers to aid the picket work at large stores selling unfair Yakima apples.

OFFICIAL PUBLICATION, JOINT COUNCIL OF TEAMSTERS NO. 28

WASHINGTON TEAMSTER

Labor's greatest voice in the Pacific Northwest

Vol. XXII, No. 47 | SEATTLE, WASHINGTON | January 20, 1961

SEATTLE PICKETING STEPPED UP BY LOCAL 760 MEMBERS

40 ladies 'invade' chain store area

All-out drive to alert public of non-union apple boycott

"Forty Ladies from Hell"—which, in this case, is the Yakima Valley strike area, invaded the Seattle chain store domain Thursday afternoon to picket in front of stores handling non-union Yakima apples.

The ladies, all members of Fruit and Produce Warehousemen's Local 760, came to the Seattle area aboard a chartered bus. They planned to picket, with informational signs on Thursday, Friday and Saturday of this week telling the public of the facts behind the long strike at the 23 apple warehouses in the valley.

Local 760 is battling for its life against the fat-subsidized Yakima apple barons and to hold union wages and conditions by keeping union integrity and solidarity.

The picketing of Thursday afternoon and business agents last Thursday in Seattle voted all-out support of the Local 760 struggle, and the strike picketing will be assigned with the visitors.

Fred J. Brown, organizer for Joint Council of Teamsters No. 28, in announcing Local 760 in the informational picketing and pamphlet program in Seattle, Brown reported that two Joint Council organizers have also been assigned, as well as business agents and committees from almost every Teamster Union in the Seattle area also to help at the lines.

"The Joint Council is making every conscious legally possible to help Local 760 win this strike against the Yakima apple packers," Teamsters' General W. Brewster said. "This is a direct attack against union security which is the very foundation and cause of existence of a trade union movement. If the employers win here, they will try to spread this 'right to work' influence elsewhere."

Secretary James Partington also spoke at the Tuesday meeting reporting that meetings were scheduled between the union and the management groups this week, "but if they are anything like the previous meetings, little or nothing can be expected."

Partington stated that the morale of the strikers is good and that the boycott strikers is being felt by a sharp drop in apple car loadings from the strike region to date which.

[fol. 28]

EXHIBIT NO. 3 TO STIPULATION OF FACTS

25

[fol. 29]

Exhibit No. 4 to Stipulation of Facts

Safeway Stores

2 pickets January 12	W. Spokane and Chelan
2 pickets January 6	California & W. College
2 pickets January 7	California & W. Dawson
2 pickets January 12	35th S. W. & Morgan
2 pickets January 5, 6 & 7	15th S. W. & Roxbury
2 pickets January 7	4th S. & Michigan
2 pickets December 27th and 29th	Rainier & Dawson
2 pickets January 13	Empire Way & Othello
3 pickets January 12, 13 and 14	S. 216 & Highway 99
2 pickets January 14	Renton, 3rd Ave. & Shaddock
2 pickets January 12 and 13	Renton, 2nd Ave. & Wells
2 pickets January 5, 6, and 7	Top Hat, 112 First Ave., So.
2 pickets January 5, 6, and 7	Burien, S. W. 152nd & Ambaum Road
2 pickets January 12, 13 and 14	Do.
2 pickets December 29	Burien, Ambaum & 143rd S. W.
2 pickets January 5 and 6	No. 36th & Dayton
2 pickets December 27 and 29	No. 40th & Stoneway
2 pickets December 29th	No. 155th & Aurora
2 pickets December 27	No. 105th & Aurora
2 pickets December 29	E. 125th & Bothell Way
2 pickets December 27	15th N. W. & W. 85th
2 pickets January 5	W. 80th & 24th N. W.
2 pickets January 7	22nd N. W. & W. 57th
2 pickets January 6 and Jan. 14	No. 87th & Greenwood Ave.
2 pickets January 5	No. 71st & Greenwood Ave.
2 pickets January 5	No. 45th & Bagley
2 pickets January 6	E. 50th & Brooklyn
2 pickets December 27 and 29th	35th N. E. & E. 75th
2 pickets Dec. 27 and 29	E. 73rd & Roosevelt Way
2 pickets Jan. 12 & 13	Do.
2 pickets December 27 and 29	15th N. E. & E. 173rd
2 pickets January 5	Edmonds, 5th & Main
2 pickets January 13 and 14	First Ave., West, & Mercer
2 pickets January 14	Highway 99 & Midway
2 pickets Dec. 27 and 29	516 First Ave., West
2 pickets Jan. 7 and 12	Eastlake & Hamlin
2 pickets Jan. 6	Boren Ave. & Olive Way
2 pickets Jan. 7	Broadway & E. Harrison
2 pickets January 12	15th No. & John St.
2 pickets January 7	Madison & Summit
2 pickets January 6	23rd Ave. & E. Union
2 pickets January 6	8th Ave., So., & Jackson
2 pickets January 5	23rd Ave., So., & Jackson
2 pickets January 6	Occidental & Yesler
2 pickets January 13 & 14	Rainier & Forrest
2 pickets January 14	Airport Way & 13th So.
2 pickets January 13 and 14	Bellevue, 104th N. E. & 4th
2 pickets January 12	Kirkland, Kirkland Ave. & 3rd

[fol. 30]

EXHIBIT NO. 5 TO STIPULATION OF FACTS

Telephone GLencourt 2-7194

Fruit & Vegetable Packers & Warehousemen
Local No. 760
I. B. of T. C. W. & H. of A.

Jim Farrington
Secretary-Treasurer

16 North 3rd Avenue
Yakima, Washington

Instructions to Pickets.

Dear Picket:

You are being asked to help publicize a nationwide consumer boycott aimed at non-union Washington State Apples. To make this program a success your cooperation is essential. Please read these instructions and follow them carefully.

1 At all times you are to engage in peaceful picketing. You are forbidden to engage in any altercation, argument, or misconduct of any kind.

2. You are to walk back and forth on the sidewalk in front of the consumer entrances to the grocery stores. If a particular store is located toward the rear of a parking lot, you are to ask the store manager for permission to walk back and forth on the apron or sidewalk immediately in front of the store; but if he denies you this permission, you are to picket only on the public sidewalk at the entrances to the parking lot. As far as large shipping centers are concerned, you will be given special instruction for picketing in such locations.

3. You are not to picket in front of or in the area of any entrance to the store which is apparently set aside for the use of store employees and delivery
[fol. 31] men. As noted above, you are to limit your picketing to the consumer entrances to the store.

4. This union has no dispute with the grocery stores, and you are forbidden to make any statement to the effect that the store is unfair or on strike. You

are also forbidden to request that the customers not patronize the store. We are only asking that the customers not buy Washington State apples, when they are shopping at the store.

5. Similarly, you are not to interfere with the work of any employees in the store. If you are asked by these employees what the picketing is about, you are to tell them it is an advertising or consumer picket and that they should keep working. Likewise if you are asked by any truck drivers who are making pickups or deliveries what the picket is about, you are to advise that it is an advertising or consumer picket and that it is not intended to interfere with pickups or deliveries (i.e. that they are free to go through).

6. If you are given handbills to distribute, please distribute these handbills in a courteous manner and if the customers throw them on the ground, please see that they are picked up at once and that the area is kept clean.

7. You are forbidden to use intoxicating beverages while on duty or to have such beverages on your person.

8. If a state official or any other private party should complain to you about the picketing, advise them you have your instructions and that their complaints should be registered with the undersigned union representative.

9. These instructions should answer most of your questions concerning this program. However, if you [fol. 32] have any additional questions or if specific problems arise which require additional instructions, please call the undersigned.

TEAMSTERS UNION LOCAL 760,

By .....
Representative

.....
Address

.....
Phone Number

EXHIBIT NO. 6 TO STIPULATION OF FACTS

Notice to Storage Manager and Store Employees.

We are advised that you are presently engaged in selling Washington State Apples.

The 1960 crop of Washington State Apples is being packed by non-union firms, including 26 firms in the Yakima Valley. Prior to this year, the 26 Yakima Valley firms had been parties to a collective bargaining contract with Teamsters Union Local 760 of Yakima, Washington, but this year, when a new contract was being negotiated, the employers took the position that many of the basic provisions of the prior contract, such as seniority, overtime, protection against unjust discharge, grievance procedure and union security, should be weakened or eliminated entirely. These extreme demands plus a refusal to bargain in good faith led to a strike against the employer. The union made all possible efforts to avoid this strike as did outside agencies who were assisting in the negotiations. Even the Governor of the State of Washington, the Honorable Albert D. Rosellini, intervened and suggested that the parties agree to a fact finding committee or arbi- [fol. 83] tration. The union agreed to these proposals but the employers declined.

The employer's refusal to bargain in good faith has caused the Seattle office of the National Labor Relations Board to prepare a complaint against the employers, charging them with unfair labor practices in violation of federal law.

The strike at Yakima is still continuing and in order to win this strike, we must ask the consuming public not to purchase Washington State Apples.

Therefore, we are going to place peaceful pickets at the entrances to your store for the purpose of trying to persuade the public not to buy Washington Apples. These pickets are being instructed to patrol peacefully in front of the consumer entrances of the store, to stay away from the delivery entrances and not to interfere with the work of your employees, or with deliveries to or pickups from your store. A copy of the instructions which have been furnished to the pickets is attached herewith.

We do not intend that any of your employees cease work as a result of the picketing. We ask that you advise your employees of our intentions in this respect, perhaps by posting this notice on your store bulletin board.

If any of your employees should stop work as a result of our program, or if you should have any difficulties as far as pickups and deliveries are concerned, or if you observe any of the pickets disobeying the instructions which they have been given, please notify the undersigned union representative at once and we will take steps to see that the situation is promptly corrected.

As noted above, our information indicates that you are presently selling Washington State Apples. If, however, this information is not correct and your are selling apples [fol. 34] exclusively from another state, please notify the undersigned and we will see that the pickets are transferred to another store where Washington State Apples are actually being sold.

Thank you for your cooperation.

TEAMSTERS UNION LOCAL 760
Yakima, Washington.

By .....
Representative

.....
Address

.....
Phone

[fol. 35]

EXHIBIT NO. 7 TO STIPULATION OF FACTS

DON'T BUY WASHINGTON STATE APPLES

THE 1960 CROP OF WASHINGTON STATE APPLES IS BEING PACKED BY NON-UNION FIRMS

Included in this non-union operation are twenty-six firms in the Yakima Valley with which there is a labor dispute. These firms are charged with being

UNFAIR

by their employees who, with their union, are on strike and have been replaced by non-union strikebreaking workers employed under substandard wage scales and working conditions.

In justice to these striking union workers who are attempting to protect their living standards and their right to engage in good-faith collective bargaining, we request that you

DON'T BUY WASHINGTON STATE APPLES

TEAMSTERS UNION LOCAL 760
YAKIMA, WASHINGTON

This is not a strike against any store or market.

(P.S.—PACIFIC FRUIT & PRODUCE CO. is the only firm packing Washington State Apples under a union contract.)

[fol. 36]

EXHIBIT NO. 8 TO STIPULATION OF FACTS

WE HAVE TO TELL THE WORLD

THAT THE 1960 CROP OF

WASHINGTON STATE APPLES

IS BEING PACKED BY NON-UNION FIRMS

These non-union firms include 26 firms operating under strike conditions with their union members replaced on the job by strikebreakers. These striking workers have declared that these twenty-six struck firms are

UNFAIR

because, not only are the strikebreakers working under non-union wage and hour conditions, but also because, although the voters of Washington State have TWICE decisively turned down the vicious "RIGHT TO WORK" proposals at general elections, these struck firms ARE TRYING TO FORCE THE VICIOUS "RIGHT TO WORK" CONDITIONS ON THEIR WORKERS.

These striking workers, faced with the gigantic task of protecting their living standards and their right to bargain in good faith for their economic welfare, request that you

DON'T BUY WASHINGTON STATE APPLES

TEAMSTERS UNION LOCAL 760
YAKIMA, WASHINGTON

This is not a strike against any store or market.

(P.S. PACIFIC FRUIT & PRODUCE CO. is the only firm packing Washington State Apples under a union contract.)

[fol. 37]

EXHIBIT NO. 9 TO STIPULATION OF FACTS

[fol. 38]

132 NLRB No. 102

D-2371
Seattle, Wash.

* * * *

Before the

NATIONAL LABOR RELATIONS BOARD

Case No. 19-CC-155

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, AND JOINT COUNCIL NO. 28 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

and

TREE FRUITS LABOR RELATIONS COMMITTEE, INC.

DECISION AND ORDER—August 24, 1961

Upon unfair labor practice charges filed on January 9, 1961, as amended on February 6, 1961, by Tree Fruits Labor Relations Committee, Inc., herein called Tree Fruits, against Respondents, Fruit & Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein respectively called Local 760 and Joint Council No. 28, the General Counsel of the National Labor Relations Board by the Regional Director for the Nineteenth Region issued an amended complaint alleging that Respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (b) (4) (i) and (ii) (B) of the Act. Copies of the complaint, charges and notice of hearing were served upon the Respondents and the charging party.

[fol. 39] With respect to the unfair labor practices, the complaint alleged that by picketing at the premises of retail stores of Safeway Stores, Inc., in Seattle, Washington, Respondents have induced and encouraged employees of

Safeway and of other employers engaged in commerce or in an industry affecting commerce to engage in strikes and have threatened, coerced and restrained Safeway and other employers, with an object of forcing Safeway or other persons to cease doing business with members of Tree Fruits. Thereafter, Respondents filed an answer denying the material allegations of the complaint.

On February 23, 1961, all parties entered into a "Stipulation of Facts" waiving a hearing and the taking of testimony before a Trial Examiner, the making of findings of fact and conclusions of law by a Trial Examiner, and the issuance of an Intermediate Report and Recommended Order. They further agreed to submit the case directly to the Board for findings of fact, conclusions of law, and order based upon a record to consist entirely of the charge, amended charge, complaint, amended complaint, answers, and the "Stipulation of Facts" and exhibits attached thereto.

On March 8, 1961, the Board approved the stipulation and transferred the case to itself. Thereafter, the General Counsel, the Respondents and Tree Fruits filed briefs.

Upon the basis of the stipulation and the entire record in the case, the Board [1] makes the following:

Findings of Fact.

I. Tree Fruits Labor Relations Committee, Inc., is a Washington corporation with its principal office in Yaki- [fol. 40] ma, Washington. It acts as the agent of its employer-members in labor disputes and in collective bargaining with labor organizations which represent employees of its members. During the last fiscal year, the employer-members of Tree Fruits packed, sold and shipped to purchasers located outside the State of Washington apples and soft fruits valued at more than $10,000,000.

Safeway Stores, Inc., a Maryland corporation with its principal office in Baltimore, Maryland, is engaged in the

[1] Pursuant to the provisions of Section 3 (b), the Board has delegated its powers in connection with this case to a three-member panel.

retail sale of food in several States, including the State of Washington. During 1960, Safeway Stores received in the State of Washington from sources outside the State merchandise valued at more than $1,000,000. Its retail sales during the same period were in excess of $1,000,000.

The parties admit, and we find, that Tree Fruits and Safeway Stores are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. Fruit & Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations within the meaning of Section 2 (5) of the Act.

III. The facts.

Tree Fruits represent 21 fresh fruit packing and warehousing firms in the Yakima, Washington, area, in collective bargaining with Local 760. Three other firms in the same area bargain separately with the same labor organization. In 1960, the collective bargaining agreements between Local 760 and the aforesaid firms expired. During negotiations for a new collective bargaining contract, Tree Fruits made certain proposals for modifications of existing terms and conditions of employment [fol. 41] which Local 760 found unacceptable. Thereafter, on August 29, 1960, Local 760 called a strike against employer-members of Tree Fruits and some other employers in the area. In December 1960, Local 760 decided, in furtherance of its continuing dispute with the aforesaid employers, to promote a consumer boycott of Washington State apples. Local 760 requested Joint Council No. 28, with which it is affiliated, to assign Joint Council organizers to assist with this program. Thereafter, the Joint Council assigned Fred Bowen, a Joint Council organizer, to work with Local 760. While so engaged on behalf of Local 760, Bowen worked under the direction and control of James Farrington, secretary-treasurer of Local 760. In late December 1960, Farrington instructed Bowen to carry out a program of picketing and handbilling at the premises of certain Safeway stores in Seattle,

Washington, which were then selling apples obtained from members of Tree Fruits.

Before the start of the picketing, Respondents gave the pickets written instructions which provided, *inter alia*:

> 3. You are not to picket in front of or in the area of any entrance to the store which is apparently set aside for the use of store employees and delivery men. As noted above, you are to limit your picketing to the consumer entrances to the store.
>
> 4. This union has no dispute with the grocery stores, and you are forbidden to make any statement to the effect that the store is unfair or on strike. You are also forbidden to request that the customers not patronize the store. We are only asking that the customers not buy Washington State apples, when they are shopping at the store.
>
> 5. Similarly, you are not to interfere with the work of any employees in the store. If you are asked by [fol. 42] these employees what the picketing is about, you are to tell them it is an advertising or consumer picket and that they should keep working. Likewise if you are asked by any truckdrivers who are making any pickups or deliveries what the picket is about, you are to advise that it is advertising or consumer picket and that it is not intended to interfere with pickups or deliveries (i. e., that they are free to go through).

The pickets or Bowen also gave each store manager a written document which recited Local 760's version of the dispute with Tree Fruits and explained the purpose and procedure of the picketing as follows:

> The strike at Yakima is still continuing and in order to win this strike, we must ask the consuming public not to purchase Washington State Apples.
>
> Therefore, we are going to place peaceful pickets at the entrances to your store for the purpose of trying to persuade the public not to buy Washington Apples. These pickets are being instructed to patrol peacefully in front of the consumer entrances of the store, to stay away from the delivery entrances and

not to interfere with the work of your employees, or with deliveries to or pickups from your store.

We do not intend that any of your employees cease work as a result of the picketing. We ask that you advise your employees of our intentions in this respect, perhaps by posting this notice on your store bulletin board.

If any of your employees should stop work as a result of our program, or if you should have any difficulties as far as pickups and deliveries are concerned or if you observe any of the pickets disobeying the instructions which they have been given, please notify the undersigned union representative at once and we will take steps to see that the situation is promptly corrected.

[fol. 43] On December 27 and 29, 1960, and on January 5, 6, 7, 12, 13, 14, 19, 20, and 21, 1961, pickets appeared at a number of Safeway stores located in and near Seattle, Washington. The pickets patrolled in front of the store premises wearing cardboard placards which stated: "TO THE CONSUMER: NON-UNION WASHINGTON STATE APPLES ARE BEING SOLD AT THIS STORE. PLEASE DO NOT PURCHASE SUCH APPLES. THANK YOU. TEAMSTERS LOCAL 760, YAKIMA, WASHINGTON." The pickets also distributed handbills which urged against the buying of Washington State apples because the 1960 crop was being packed by nonunion firms which were unfair to their employees.

Two and, in one case, three pickets appeared at store premises after the stores opened for business and left before the stores closed. The pickets walked back and forth on the sidewalks in front of the main customer entrances to the stores, giving out handbills to any persons passing by who were willing to accept them. At no time did they walk in front of store entrances used solely by the employees of the stores, or used exclusively for delivery of merchandise. At locations where stores were situated to the rear of a parking lot the pickets confined their picketing to the public sidewalk near the entrance to the parking lot.

The pickets were visible, through the windows of the stores, to some of the employees working in the stores. Some store employees used main customer entrances to the stores for ingress and egress and, in so doing, passed the pickets.

At all times, while the picketing and handbilling were being conducted, the employees of the stores continued to work in the normal way. Also, the stores continued to receive deliveries of merchandise as usual. No deliveries or pickups were stopped or interfered with and no [fol. 44] employee of Safeway or of any other employer quit work or refused to handle fruit packed by the employer-members of Tree Fruits.

At all times, the picketing and handbilling were peacefully conducted. The entrances to the stores were not blocked and ingress and egress were not interfered with.

Discussion.

The General Counsel contends that the conduct of Respondents violated Section 8 (b) (4) (i) and (ii) (B) of the Act under the Board's decision in the *Perfection Mattress case.*[2]

1. In that case a majority of the Board held that a picket line at the premises of a secondary employer necessarily invites employees to make common cause with the picketing union and to refrain from working behind the picket line, irrespective of the literal appeal of the legends on the picket sign. Accordingly, the majority concluded that the picketing of retail stores with signs urging customers not to buy products of the primary employer constituted inducement or encouragement of employees of neutral employers within the meaning Section 8 (b) (4) (i) of the Act. The Board has reconsidered this doctrine of the *Perfection Mattress* case and a majority has now decided that picketing of a secondary employer's premises does not *per se* constitute inducement or encouragement

[2] *United Wholesale and Warehouse Employees, Local 261 (Perfection Mattress & Spring Company)*, 129 NLRB No. 125. (Member Fanning dissenting.)

of employees of neutrals within the meaning of clause (i) of Section 8 (b) (4), nor does it raise an irrebuttable presumption as to the intent or probable consequences of the picketing.[3] Whether in any given case picketing [fol. 45] is intended or calculated to "induce or encourage" employees of secondary employers to engage in a work stoppage or refusal to perform services is to be determined by all the evidence in that particular case and not by an *a priori* assumption.[4]

In the present case, all the evidence indicates that by their picketing of the Safeway stores, Respondents did not intend that employees of Safeway or of other neutral persons should engage in work stoppages; nor were cessations of work likely to occur as the result of such picketing. Thus, the picketing was confined to store customer entrances. The signs carried by the pickets were addressed specifically to consumers and urged them not to buy Washington State apples sold in the store. The handbills similarly only urged consumers not to buy such apples. Written instructions to pickets issued by Respondents cautioned the pickets to limit their picketing to consumer entrances, and not to interfere with store employees or with pickups and deliveries. The notice to store managers gave the cause of the dispute and specifically stated that it was not intendent that any employees cease work as the result of the picketing. This notice also asked store managers to report any work stoppages or difficulties with pickups or deliveries so that Local 760 could take steps to correct the situation immediately. Finally, the picketing had no effect on store employees or on employees of suppliers.

As the foregoing evidence indicates that Respondents' picketing was directed at consumers only, and was not intendent to "induce or encourage" employees of Safeway or of its suppliers to engage in any kind of action, we find that by such picketing Respondents did not violate Section 8 (b) (4) (i) (B) of the Act.

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[3] *Upholsterers Frame & Bedding Workers Twin City Local No. 61 (Minneapolis House Furnishing Company)*, 132 NLRB No. 2. (Members Rodgers and Leedom dissenting.)

[4] *Ibid.*

[fol. 46] 2. Although the picketing followed here did not violate Section 8 (b) (4) (i) (B), it did violate Section 8 (b) (4) (ii) (B). In the *Minneapolis House Furnishing* case [5] the Board unanimously reiterated that "by literal wording of the proviso [to Section 8 (b) (4)] as well as through the interpretive gloss placed thereon by its drafters, consumer picketing in front of a secondary establishment is prohibited." Such picketing "threaten[s], coerce[s], or restrain[s]" persons within the meaning of Section 8 (b) (4) (ii). And when it has for an object forcing or requiring any person to cease selling or handling the products of any other producer or processor the picketing violates Section 8 (b) (4) (ii) (B). In the present case the picketing had one of these proscribed objectives. The purpose of picketing the Safeway stores was to persuade consumers not to purchase nonunion Washington State apples which Safeway in turn purchased from members of Tree Fruits. The natural and foreseeable result of such picketing, if successful, would be to force or require Safeway to reduce or to discontinue altogether its purchases of such apples from the struck employers. It is reasonable to infer, and we do, that Respondents intended this natural and foreseeable result. Accordingly, we find that the foregoing picketing violated Section 8 (b) (4) (ii) (B) of the Act.

We also find that both Respondents are responsible for the picketing. Local 760 decided upon the picketing and directed it. The Joint Council assigned one of its organizers, Fred Bowen, to work with Local 760 in conducting the picketing campaign. Bowen worked under the direction of Local 760's secretary-treasurer in organizing the picketing found unlawful. We therefore find that the Joint Council is equally responsible with Local 760 for [fol. 47] the unlawful picketing, either as agent of, or as joint principal with, Local 760.

IV. The effect of the unfair labor practices on commerce.

The activities of the Respondents set forth above have a close, intimate, and substantial relation to trade, traffic and commerce among the several states, and tend to

[5] *Upholsterers Frame & Bedding Workers Twin City Local No. 61 (Minneapolis House Furnishing Company)*, 132 NLRB No. 2.

lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy.

Having found that the Respondents have engaged in unfair labor practices, we shall order them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

Conclusions of Law.

1. Tree Fruits Labor Relations Committee, Inc., and Safeway Stores, Inc., are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Fruit & Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations within the meaning of Section 2 (5) of the Act.

3. By their consumer picketing of Safeway stores in Seattle, Washington, in furtherance of a dispute with Tree Fruits Labor Relations Committee, Inc., Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (4) (ii) (B) of the Act.

[fol. 48] 4. By the aforesaid consumer picketing of Safeway stores, Respondents have not and are not engaging in unfair labor practices within the meaning of Section 8 (b) (4) (i) (B) of the Act.

Order.

Upon the entire record in the case and pursuant to Section 10 (c) of the Act, as amended, the National Labor Relations Board hereby orders that Respondents, Fruit & Vegetable Packers & Warehousemen, Local 760, Yakima, Washington, and Joint Council No. 28 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Seattle, Washington, their officers, representatives, successors, agents, and assigns, shall:

1. Cease and desist from:

(a) Threatening, coercing or restraining Safeway Stores, Inc., by picketing its retail stores, where an object thereof is to force or require Safeway Stores, Inc., to cease using, selling, handling, transporting, or otherwise dealing in apples sold by members of Tree Fruits Labor Relations Committee, Inc., or to cease doing business with such members.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post copies of the attached notice marked "Appendix" [6] at their offices and meeting halls. Copies of said notice, to be furnished by the Regional Diretcor for the Nineteenth Region, shall, after being duly signed by Respondents, be posted by them immediately upon receipt [fol. 49] thereof, and be maintained by them for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish to the said Regional Director copies of the aforementioned notice for posting by Safeway Stores, Inc., the company willing, at the picketed stores.

(c) Notify the Regional Director, in writing, within 10 days from the date of this Order, as to the steps taken by Respondents to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges violations of Section 8 (b) (4) (i) (B) of the Act.

Dated, Washington, D. C. Aug. 24, 1961.

FRANK W. MCCULLOCH, Chairman,
JOHN H. FANNING, Member,
GERALD A. BROWN, Member,
National Labor Relations Board.

(Seal)

[6] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE.

To All Members of Fruit & Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Pursuant To
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

[fol. 50] We Will Not by picketing its stores, threaten, coerce, or restrain Safeway Stores, Inc., where an object thereof is to force or require Safeway Stores, Inc., to cease using, selling, handling, transporting, or otherwise dealing in the products of members of Tree Fruits Labor Relations Committee, Inc., or to cease doing business with such members.

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760,
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

JOINT COUNCIL NO. 28 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
(Labor Organization)

Dated ..... By .....
(Representative (Title)

[fol. 51] In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

* * * *

Case No. 16588

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, AND JOINT COUNCIL NO. 28 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA,
PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—August 25, 1961

To: The United States Court of Appeals
For the District of Columbia:

This is a petition to review an order of the National Labor Relations Board, hereinafter sometimes called the "Board." The Board entered a final order by which petitioner is aggrieved and its interests adversely affected, on August 24, 1961, in a proceeding appearing and designated on the records of the Board as Fruit & Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Tree Fruits Labor Relations Committee, Inc., Case No. 19-CC-155.

[fol. 52] The decision and order of the Board is designated as 132 NLRB No. 102.

In support of this petition, your petitioner respectfully shows to this court:

(1) That after due proceedings before the Board in conformity with procedures specified in Section 10 (b) and (c) of the National Labor Relations Act, as amended,

the Board found that the petitioner had violated Section 8 (b) (4) (ii) (B) of the National Labor Relations Act.

(2) That this court has jurisdiction over this action and the parties hereto under the provisions of Section 10 (f) of the National Labor Relations Act.

(3) The petitioner respectfully submits and contends that the Board erred in finding that the petitioner violated Section 8 (b) (4) (ii) (B) of the Act and that the order of the Board is unsupported by substantial evidence on the record considered as a whole, and is contrary to law.

(4) The petitioner respectfully prays that the order of the Board be set aside and vacated. Petitioner further prays for such other relief as may be just and proper.

Dated this 25th day of August, 1961.

DAVID LEO UELMEN,
212 West Wisconsin Avenue,
Milwaukee 3, Wisconsin,
Attorney for Petitioner.

[fol. 53] In the
UNITED STATES COURT OF APPEALS
For the
District of Columbia Circuit,

* * * *

Case No. 16588

[Title Omitted]

AMENDED PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—September 7, 1961

To: The United States Court of Appeals
for the District of Columbia:

This is a petition to review an order of the National Labor Relations Board, hereinafter sometimes called the "Board." The Board entered a final order by which petitioner is aggrieved and its interests adversely affected, on August 24, 1961, in a proceeding appearing and designated on the records of the Board as Fruit & Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Tree Fruits Labor Relations Committee, Inc., Case No. 19-CC-155.

[fol. 54] The decision and order of the Board is designated as 132 NLRB No. 102.

In support of this petition, your petitioner respectfully shows to this Court:

(1) That after due proceedings before the Board in conformity with procedures specified in Section 10 (b) and (c) of the National Labor Relations Act, as amended, the Board found that the petitioner had violated Section 8 (b) (4) (ii) (B) of the National Labor Relations Act.

(2) That this Court has jurisdiction over this action and the parties hereto under the provisions of Section 10 (f) of the National Labor Relations Act.

(3) The petitioner respectfully submits and contends that the Board erred in finding that the petitioner violated Section 8 (b) (4) (ii) (B) of the Act and that

the order of the Board is unsupported by substantial evidence on the record considered as a whole, and is contrary to law.

(4) Section 8 (b) (4) (ii) (B) of the Act as construed by the Board in the instant proceeding is on its face and as applied in the circumstances of this case unconstitutional and void in that it abridges rights of free speech and assembly guaranteed under the First Amendment to the Constitution of the United States.

(5) The petitioner respectfully prays that the order of the Board be set aside and vacated. Petitioner further prays for such other relief as may be just and proper.

Dated this 7th day of September, 1961.

DAVID LEO UELMEN,
HUGH HAFER,
212 West Wisconsin Avenue,
Wilwaukee 3, Wisconsin,
Attorneys for Petitioner.

* * * *

[fol. 55]

IN THE UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 16,588

[Title Omitted]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION TO REVIEW ITS ORDER AND REQUEST FOR ENFORCEMENT OF SAID ORDER—September 18, 1961

To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136,

29 U.S.C., Secs. 151 et seq., as amended by 73 Stat. 519), files this answer to the petition to review the Board order issued against petitioners on August 22, 1961.

1. The Board admits the allegations contained in Section (1) of the petition to review.

2. The Board admits the allegations contined in Section (2) of the petition to review.

3. With respect to the allegations contained in Section (3) of the petition to review, the Board denies each and every allegation of error.

[fol. 56] 4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper, and respectfully requests this Court to enter a decree enforcing said order.

5. Pursuant to Section 10 (e) and (f) of the Act, and Rule 38 (g) of this Court, the Board will certify and file with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceedings before the Board.

Wherefore, the Board prays that the Court cause notice of filing of this Answer and request for enforcement to be served upon the petitioners, and that this Court make and enter a decree denying the petition for review and enforcing in full the Board's Order.

/s/ Marcel Mallet-Prevost,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D. C., this 18th day of September, 1961.

[fol. 57]

IN THE UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 16,588

[Title Omitted]

ANSWER TO PETITION FOR ENFORCEMENT—September 22, 1961

The Petitioners, in answer to the Request for Enforcement of the National Labor Relations Board, state as follows:

1. The allegations of paragraph 4 of the Request for Enforcement are denied.

2. Petitioners affirmatively allege that

(a) The Petitioners respectfully submit and contend that the Board erred in finding that the Petitioners violated Section 8 (b) (4) (ii) (B) of the Act and that the order of the Board is unsupported by substantial evidence on the record considered as a whole, and is contrary to law.

(b) Section 8 (b) (4) (ii) (B) of the Act as construed by the Board in the instant proceeding is on its face and as applied in the circumstances of this case unconstitutional and void in that it abridges rights of free speech and assembly guaranteed under the First Amendment to the Constitution of the United States.

[fol. 58] Wherefore, the Petitioners move the Court to deny the Request for Enforcement.

Dated this 22nd day of September, 1961.

HUGH HAFER,
212 West Wisconsin Avenue,
Milwaukee 3, Wisconsin,
Attorney for Petitioners.

* * * *

IN THE UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 16,588

[Title Omitted]

Before: Edgerton, Fahy and Danaher, Circuit Judges, in Chambers.

ORDER GRANTING LEAVE TO FILE AN AMENDED PETITION TO REVIEW—October 6, 1961

Upon consideration of petitioners' motion for leave to file an amened petition for review in this case, and it appearing that no opposition has been filed and that the amended petition for review has been lodged with the clerk, it is

[fol. 59] Ordered by the court that the motion for leave to file an amended petition for review is granted and that the clerk is directed to file the petitioners' amended petition for review.

Per Curiam.

Dated: Oct. 6, 1961.

IN THE UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 16,588

[Title Omitted]

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.116, Rules and Regulations of the National Labor Relations Board—Series 8, hereby certifies that the record set forth in the index attached hereto, consisting of one volume, consti-

tutes the entire record of a proceeding had before said Board and known upon its record as Case No. 19-CC-155. Such record includes the pleadings and stipulation upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

[fol. 60] In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 19 day of Oct. 1961.

/s/ Ogden W. Fields,
OGDEN W. FIELDS,
Executive Secretary,
National Labor Relations Board.

(Seal)

INDEX TO THE CERTIFIED RECORD

Volume I.

1. Charge filed by Tree Fruits Labor Relations Committee, Inc., on January 9, 1961.
2. Regional Director's complaint and notice of hearing dated January 21, 1961.
3. Amended charge filed by Tree Fruits Labor Relations Committee, Inc., on February 6, 1961.
4. Regional Director's amended complaint and notice of hearing dated February 14, 1961.
5. Answer of Fruit and Vegetable Packers & Warehousemen's Local 760, to amended complaint received on February 16, 1961.
6. Answer of Joint Council No. 28 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, to amend complaint received on February 16, 1961.

7. Stipulation of facts together with exhibits attached thereto, entered into among the parties on February 23, 1961, waiving a hearing and the taking of testimony before a Trial Examiner, the making of findings of fact and [fol. 61] conclusions of law and the issuance of an Intermediate Report.

8. Copy of Order approving stipulation and transferring case to Board issued by the National Labor Relations Board on March 8, 1961.

9. Copy of Decision and Order issued by the National Labor Relations Board on August 21, 1961.

IN THE UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 16,588

[Title Omitted]

PREHEARING CONFERENCE STIPULATION—October 26, 1961

Pursuant to Rule 38 (k) of the Rules of this Court, the parties, subject to the approval of the Court, hereby stipulate as follows with respect to the issues, the dates for the filing of the briefs and joint appendix, and contents of the joint appendix.

I. The Issues.

1. Whether the Board properly concluded that the unions' picketing—which was confined to customer entrances at the stores of neutral employers and was carried on with signs addressed specifically to consumers—[fol. 62] threatened, restrained or coerced the neutral employers with an object of forcing such employers to cease doing business with the primary employer, in violation of Section 8 (b) (4) (ii) (B) of the Act.

2. Whether Section 8 (b) (4) (ii) (B) of the Act, if construed to prohibit the above-described picketing, contravenes the prohibitions of the First Amendment.

II. The Briefs and Joint Appendix.

1. The Union's brief shall be filed on or before November 27, 1961.

2. The Board's brief shall be filed on or before December 18, 1961.

3. The Union's reply brief, if any, shall be filed on or before December 28, 1961.

4. A joint appendix, to be printed by petitioners, shall be filed on or before November 27, 1961.

5. The joint appendix shall consist of:

a. Decision and Order of the Board, dated August 22, 1961, in Board Case No. 19-CC-155;

b. The "Stipulation of Facts" and exhibits attached thereto in Board Case No. 19-CC-155.

Dated at Milwaukee, Wisconsin, this 26th day of October, 1961.

HUGH HAFER,
Counsel for Petitioner Fruit & Vegetable Packers, et al.,

Dated at Washington, D. C., this 26th day of October, 1961.

MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

[fol. 63]

IN THE UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

* * * * *

No. 16,588

[Title Omitted]

Before: Bastian, Circuit Judge, in Chambers.

PREHEARING ORDER—October 27, 1961

The parties in the above entitled case having submitted their prehearing stipulation dated October 26, 1961, pursuant to Rule 38 (k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is hereby approved, and it is

Ordered that the stipulation dated October 26, 1961, shall control further proceedings in this case, and that the stipulation and this order shall be printed in the joint appendix of the parties.

Dated: Oct. 27, 1961.

[fol. 64]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16588

[File Endorsement Omitted]

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, AND JOINT COUNCIL NO. 28 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review and Set Aside, and on Request for Enforcement of an Order of the National Labor Relations Board

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OPINION—Decided June 7, 1962

Mr. David Previant, with whom *Messrs. Hugh Hafer* and *David Leo Uelmen* were on the brief, for petitioners.

Mr. Melvin J. Welles, Attorney, National Labor Relations Board, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Messrs. Stuart Rothman*, General Counsel, *Dominick L. Manoli*, Associate General Counsel, and *Marcel Mallet-Prevost*, Assistant General Counsel, National Labor Relations Board, were on the brief, for respondent. *Mr. Morton Namrow*, Attorney, National Labor Relations Board, also entered an appearance for respondent.

[fol. 65] *Mrs. Mary Ellen Krug*, of the bar of the Supreme Court of Washington, *pro hac vice*, by special leave

of court, with whom *Mr. Warren Woods* was on the brief for Tree Fruits Labor Relations Committee, Inc., as *amicus curiae* urging affirmance.

Before EDGERTON, BAZELON and WASHINGTON, *Circuit Judges.*

BAZELON, *Circuit Judge:* This case presents a question of first impression under § 8(b)(4)(ii), a wholly new provision added by the 1959 amendments to the Taft-Hartley Act.[1] The National Labor Relations Board found that the

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[1] In relevant part, § 8(b)(4)(ii) reads:

"It shall be an unfair labor practice for a labor organization or its agents—

* * *

"(4) . . . (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

* * *

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing:

* * *

". . . *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution."

Section 704(a) Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 542, 29 U.S.C. § 158(b)(4)(ii) (Supp. III 1962).

[fol. 66] petitioner Union violated that provision by picketing the premises of retail stores to urge customers not to buy products of an employer with whom the Union had a labor dispute. The Union took care that the stores' employees continued to work and that their pick-ups and deliveries were not halted. The case is before us on the Union's petition for review and the Board's cross-petition for enforcement.

The Board proceedings were initiated upon unfair labor practice charges filed by Tree Fruits, Inc., an organization of Yakima, Washington, fresh fruit packing and warehousing companies whose employees were represented by the petitioner Union. The parties stipulated to all the facts, waived hearing before a trial examiner, and submitted the case directly to the Board.

This is the substance of the stipulation:

In August 1960, after failing to reach an agreement with Tree Fruits, the Union called a strike against its member companies. When the companies refused to yield, the Union organized a consumer boycott of the struck employers' products. In conjunction with petitioner Joint Council 28, with which the Union is affiliated, it patrolled [fol. 67] the premises of Safeway stores in Seattle, Washington, which distributed apples produced by Tree Fruits' members. The patrols consisted of two or three men or women carrying placards which bore the legend:

> TO THE CONSUMER: NON-UNION WASHINGTON STATE APPLES ARE BEING SOLD AT THIS STORE. PLEASE DO NOT PURCHASE SUCH APPLES. THANK YOU. TEAMSTERS LOCAL 760, YAKIMA, WASHINGTON.

Except where the location of stores at the rear of large parking lots prevented, members of the patrol gave customers handbills setting forth the facts of the dispute and reiterating the request that consumers not buy apples produced by Tree Fruits' members.

To prevent the picketing from inducing a work stoppage, the Union instructed the pickets to explain to any Safeway employee who might inquire that the only purpose of the picketing was to enlist the cooperation of consumers in not buying apples produced under "sweatshop"

conditions and that the employee should therefore continue to work. The pickets were also told not to patrol employee or delivery entrances, not to make any statement to the effect that Safeway was unfair or on strike, and not to request customers to refrain from otherwise patronizing the stores. All these instructions were obeyed.

The Union gave each store manager a copy of the picketing instructions and a notice informing him of the cause of the dispute and the purpose of the patrol. In addition to suggesting that the notice be posted for the benefit of Safeway employees, the Union told the managers:

> If any of your employees should stop work as a result of our program, or if you should have any difficulties as far as pickups and deliveries are concerned, or if you observe any of the pickets disobeying the instructions which they have been given, please notify the undersigned union representative at once and we will take steps to see that the situation is promptly corrected.

[fol. 68] The closing paragraph of the notice advised that if Washington State apples were not on sale at the store, the manager should notify the Union which would thereupon "transfer the patrol to another store where Washington State Apples are actually being sold." As a result of these precautions, and as the Union intended, no Safeway employee stopped work and pick-ups and deliveries at the stores were unaffected.[2]

Upon these stipulated facts the Board found that the Union had threatened, coerced, or restrained Safeway to force it to cease doing business with Tree Fruits and had thus violated § 8(b)(4)(ii)(B). The Board relied upon its earlier decision in *Upholsters Frame & Bedding Workers*, 132 N.L.R.B. No. 2 (1961). There it held that picketing the premises of a secondary employer, although addressed solely to consumers, constitutes a threat, coercion, or restraint, and is therefore *per se* an unfair labor

[2] The Board found that picketing conducted in this manner is unlikely to cause work stoppages. *Fruit & Vegetable Packers & Warehousemen Local 760*, 132 N.L.R.B. No. 102, p. 6 (1961).

practice. This view, which makes the effect of picketing immaterial, was apparently followed by the General Counsel here, for he offered no evidence concerning the impact of the picketing on Safeway's sales or its relations with the struck firms.

The Board insists and the Union denies that the statute completely bans picketing at the premises of a secondary employer. The Union argues that, since the statute makes it an unfair labor practice to "threaten, coerce or restrain any person engaged in commerce," the Board must determine from the circumstances or from the conduct of the picketing whether it is *in fact* a threat, coercion or restraint. On the other hand, the Board points out that a proviso to § 8(b)(4) exempts from the prohibition "publicity other than picketing for the purpose of truth-[fol. 69] fully advising the public . . . that a product . . . produced by an employer with whom the labor organization has a primary dispute . . . [is] distributed by another employer." The Board's argument seems to be this: The Conference Committee assumed that § 8(b)(4)(ii)(B) as it passed the House prohibited all secondary publicity as a threat, coercion or restraint. The Committee therefore added the proviso in order to exempt certain forms of publicity from that prohibition. But since secondary picketing is specifically exempted from the proviso, it remains prohibited.

In support of its position, the Board urges that the legislative history of the amendatory statute conclusively shows that Congress intended to ban all secondary consumer picketing. The Board cites, for example, the explanation made by (then) Senator Kennedy of the Conference Committee's compromise on the issue of secondary publicity. The Senate conferees, Senator Kennedy explained, insisted upon preserving certain legitimate union rights including:

> (c) The right to appeal to consumers by methods other than picketing asking them to refrain from buying goods made by nonunion labor and to refrain from trading with a retailer who sells such goods.
>
> Under the [House] Landrum-Griffin bill it would have been impossible for a union to inform the cus-

> tomers of a secondary employer that that employer or store was selling goods which were made under racket conditions or sweatshop conditions, or in a plant where an economic strike was in progress. We were not able to persuade the House conferees to permit picketing in front of that secondary shop, but we were able to persuade them to agree that the union shall be free to conduct informational activity short of picketing. In other words, the union can hand out handbills at the shop, can place advertisements in newspapers, can make announcements over the radio, and can carry on all publicity short of having ambulatory picketing in front of a secondary site.[3]

[fol. 70] That statement possesses much force, in light of the important role Senator Kennedy played in managing the bill. Nor can we disregard the views of other legislators who thought the statute would ban secondary consumer picketing. See 2 LEGIS. HIST. 1389, 1426-27, 1454, 1689, 1708, 1712 (1959).[4]

Looking solely to the language of the statute, however, we believe the most plausible reading to be that § 8(b)(4)(ii) outlaws only such conduct (including picketing) as in fact threatens, coerces or restrains secondary employers, and that the proviso is intended to exempt from regulation "publicity other than picketing" even though it threatens, coerces or restrains an employer. For example, handbilling which has a severe economic impact on the secondary employer's business might be "coercive," but it would be exempted from regulation by the proviso. Perhaps the Board's view—that the proviso reflects the draftsman's assumption that without it all secondary pub-

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[3] 2 Legislative History of the Labor-Management Reporting and Disclosure Act 1432 (1959), cited hereinafter as LEGIS.HIST. To the same effect, see 2 LEGIS.HIST. 1388-89.

[4] See also 2 LEGIS.HIST. 1007, 1037, 1194, 1377, 1383, 1384, 1471; Cox, *The Landrum-Griffin Amendments to the National Labor Relations Act*, 44 MINN.L.REV. 257, 274 (1959); Fleming, *Title VII: The Taft-Hartley Amendments*, 54 NW.L.REV. 666, 690-91 (1960); Goldberg & Meiklejohn, *Title VII: Taft-Hartley Amendments with Emphasis on the Legislative History*, 54 NW.L.REV. 747, 757 (1960).

licity is banned because it necessarily threatens, coerces or restrains a secondary employer—can be squared with the statutory language. But that apears to be a less plausible reading of the statute.

In analyzing the legislative history, moreover, we must be ever mindful that we do a disservice to Congress if we construe the statute on the basis of the legislative history in a manner which would raise serious constitutional questions. Particularly is this so where there is no elucidating [fol. 71] House, Senate or Conference report on the precise point involved, and where one of the sponsors of the legislation made clear the desire to avoid constitutional questions. Cf. *International Ass'n of Machinists* v. *Street*, 367 U.S. 740, 765-68 (1961). Thus Representative Griffin stated:

> Of course, this bill and any other bill is limited by the constitutional right of free speech. If the purpose of the picketing is to coerce the retailer not to do business with the manufacturer . . . it would be covered by our bill.[5]

At the same time in referring to regulation of consumer picketing by § 8(b)(7), which was added to the Act together with § 8(b)(4)(ii), Representative Griffin further noted:

> This is subject, however, to the constitutional rights of free speech. Unless the picketing is for the coercive purpose indicated, it would not be affected by this language. In other words, whether it is the handing out handbills or putting an ad in the paper or picketing, if it is done in such a way so as clearly to be nothing more than an exercise of free speech, then the provision would not be violated.[6]

The constitutional difficulties inherent in the Board's interpretation of the statute are by no means minimal. Problems arise under the First Amendment whenever picketing is restrained. See *Thornhill* v. *Alabama*, 310

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[5] 2, LEGIS. HIST. 1615.

[6] *Ibid.*

U.S. 88 (1940). See also *National Labor Relations Board* v. *Drivers' Local*, 362 U.S. 274, 284 (1960). This is because picketing combines constitutionally protected speech for the purpose of communicating ideas with a "signal" to act which must yield to the states' power "to set the limits of permissible contest open to industrial combatants." *Giboney* v. *Empire Storage Co.*, 336 U.S. 490, 499 (1949). See *Brotherhood of Teamsters* v. *Vogt*, 354 U.S. 284 (1957).

[fol. 72] Mr. Justice Douglas has explained in an oft-cited concurring opinion why picketing is more than speech: "Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the ideas which are disseminated. Hence those aspects of picketing make it the subject of restrictive regulation." *Bakery & Pastry Drivers & Helpers Local* v. *Wohl*, 315 U.S. 769, 776-77 (1942) (Douglas, J., concurring).

The response to which Mr. Justice Douglas referred is characteristic of unionized employees to whom pickets have traditionally addressed their appeal. Such employees are subject to group discipline based on common interests and loyalties, habit, fear of social ostracism, or the application of severe economic sanctions. Hence, they may refuse to work or to make pickups and deliveries for a secondary employer, thereby causing him serious and immediate economic injury. See Cox, *Strikes, Picketing and The Constitution*, 4 VAND.L.REV. 574, 594 (1951). In that context, picketing is more than "pure" speech.

In this case, however, the Union sought to enlist the support of members of the public at large and successfully sought to *prevent* its picketing from having the customary "signal" effect on employees. Each prospective patron could read the Union's signs and literature and determine, in the light of his own interests and convictions, what course he would follow. And, as we have pointed out, the record does not show any injury to Safeway, the secondary employer. Indeed, Tree Fruits, not Safeway, is the charging party here. Thus it may well be that the picketing in this case is closer to the core notion

of constitutionally protected free speech than the picketing the Supreme Court has held may be banned.[7]

[fol. 73] It should be borne in mind that this type of "do not patronize" appeal to the general public by peaceful pickets is not restricted to labor unions. Picket lines have been used to voice objection and effect changes in the policies of business enterprises which discriminate between races,[8] purvey objectionable films, remain open on Sunday,[9] purchase materials abroad—whether from friend or foe—and distribute products deemed harmful or immoral.

It is true that even if picketing is in a given case "pure speech," this does not bar Congress or the states from prohibiting such appeals in all circumstances. Cf. *Hughes* v. *Superior Court*, 339 U.S. 460 (1950). Statutes infringing upon free speech are enforceable if the gravity of the evil the legislature seeks to prevent, discounted by its improbability, justifies the infringement.[10] But in the absence of a showing that a substantial economic impact on the secondary employer has occurred or is likely to occur, we would be hard-put to find a constitutional justification for prohibiting a union from using picketing as the form of making "do not patronize" appeals, so long as the picketing is conducted in an entirely peaceful and non-coercive manner, is addressed solely to consumers, and has no side effects which might be a basis for distinguishing it from any other form of publicity. Cf. *Lebus* v. *Building Trades Council*, 199 F. Supp 628 (E.D. La. 1961).[11]

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[7] See generally Samoff, *Picketing and the First Amendment: "Full Circle" and "Formal Surrender,"* 9 LAB.L.J. 889 (1958); Note, 107 U.PA.L.REV. 127 (1958).

[8] *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938).

[9] *Ex Parte Lyons*, 28 Cal.App.2d 293, 81 P.2d 190 (1938).

[10] *Dennis* v. *United States*, 341 U.S. 494, 510 (1951). See *Whitney* v. *California*, 274 U.S. 357, 372, 374, 377 (1927) (concurring opinion of Brandeis, J.). *See generally* Richardson, *Freedom of Expression and the Function of Courts*, 65 HARV.L.REV. 1 (1952).

[11] We do not reach the question of what "side effects" might be sufficient to remove picketing from the category of pure speech. The Board has construed the statute to permit unions to organ-

[fol. 74] We are thus constrained, in reading the statute and its legislative history, to accord proper weight to the cases which teach that when two interpretations are possible, courts must construe a statute narrowly to avoid reaching constitutional issues. We must also give full consideration to the stated desire of key legislators to avoid constitutional encroachments.

Viewed as a whole, the statute does not reflect Congress' intent to ban all secondary consumer picketing. What Congress has said is that it shall be an unfair labor practice for a union "to threaten, coerce, or restrain any person engaged in commerce . . . where . . . an object thereof is . . . forcing or requiring any person to cease . . . selling . . . the products of any other producer . . . ." Each of these terms has a meaning; each must be given effect. None can be ignored or repealed by reference to the legislative history. It is significant that when Congress wanted to outlaw picketing *per se*, it knew [fol. 75] how to do so, as is evidenced by § 8(b) (7), which forbids a union in certain circumstances "to picket or cause to be picketed any employer" if its object is to force him to recognize an uncertified union.

As we construe the statute, it condemns not picketing as such, but the use of threats, coercion and restraint to achieve specified objectives. Some picketing might come within the ambit of that prohibition. But here, there was no work stoppage, no interruption of deliveries, no vio-

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ize consumer boycotts by means "other than picketing." *American Fed'n of T. V. and Radio Artists*, 134 N.L.R.B. No. 141 (Dec. 27, 1961). See *Local 154, Internat'l Typographical Union*, 135 N.L.R.B. No. 96 (Feb. 13, 1962); *Local 142 Plumbers Union*, 135 N.L.R.B. No. 33 (Sept. 22, 1961). The questions arise whether the consumer boycott can be said, in light of Congress' tolerance of it, to be an evil of sufficient gravity to justify complete suppression of picketing, *cf. American Communications Ass'n* v. *Douds*, 339 U.S. 382, 400-01 (1950); *Dennis* v. *United States*, *supra* note 9, or whether the explicit exemption of other forms of communication from the reach of the statute saves its constitutionality. *Cf. Poulos* v. *New Hampshire*, 345 U.S. 395 (1953). See also *Railway Express Agency, Inc.* v. *New York*, 336 U.S. 106, 110 (1949); *Central Lumber Co.* v. *South Dakota*, 226 U.S. 157, 160 (1912). These questions are not now before us, however, and we do not decide them.

lence or threat of violence. The record does not show whether pickets "confronted" consumers or whether consumers felt "coerced' by their presence. Nor does the record show that the picketing—directed against only one of hundreds of products sold by Safeway—caused or was likely to cause substantial economic injury.

Since the Board proceeded on the erroneous premise that the statute completely bans consumer picketing at the premises of a secondary employer, we remand the case to the Board for further proceedings consistent with this opinion. Under that remand the Board is free to reopen the record to receive evidence upon the issue whether Safeway was in fact threatened, coerced, or restrained.[12]

Reversed and remanded.

[12] See *National Labor Relations Board* v. *Katz*, 289 F.2d 700, 709 (2d Cir. 1961); *National Labor Relations Board* v. *Cambria Clay Prod. Co.*, 215 F.2d 48 (6th Cir. 1954); *National Labor Relations Board* v. *Electronics Equip. Co.*, 194 F.2d 650 (2d Cir. 1952).

[fol. 76]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,588

FRUIT AND VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, AND JOINT COUNCIL NO. 28 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

[File Endorsement Omitted]

On Petition to Review and Set Aside, and on Request for Enforcement of, an order of the National Labor Relations Board.

Before: Edgerton, Bazelon and Washington, Circuit Judges.

JUDGMENT—June 7, 1962

This case came on to be heard on the record from the National Labor Relations Board and on a petition to review and set aside, and a request for enforcement of, the order of the National Labor Relations Board herein, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the order of the National Labor Relations Board on review in this case is set aside, and this case is hereby remanded to the Board for further proceedings consistent with the opinion of this court.

Per Circuit Judge Bazelon.

Dated: June 7, 1962.

[fol. 77]

[Petition for rehearing covering 12 pages filed June 15, 1962 omitted from this print. It was denied, and nothing more by order October 12, 1962]

[fols. 78-87] * * *

[fol. 88]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

* * * *

No. 16,588

[Title Omitted]

[File Endorsement Omitted]

Before: Bazelon, Chief Judge, and Edgerton and Washington, Circuit Judges, in Chambers.

ORDER DENYING PETITION FOR REHEARING—October 12, 1962

On consideration of respondent's petition for rehearing, it is

ORDERED by the court that the petition is hereby denied.

Per Curiam.

[fols. 89-90] * * *

[fol. 91]

[Clerk's Certificate to foregoing transcript omitted in printing.]

[fol. 92]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1962

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, AND JOINT COUNCIL NO. 28 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—January 9, 1963

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 11th, 1963.

/s/ Earl Warren
Chief Justice of the United States.

Dated this 9th day of January, 1963.

[fol. 93]

SUPREME COURT OF THE UNITED STATES

No. 921, October Term, 1962

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, ET AL.

ORDER ALLOWING CERTIORARI—June 10, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and a total of one and one-half hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

37 U.S. GOVERNMENT PRINTING OFFICE: 1963 696341 110